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**From:** Hurl, Kathy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2F3B04131F1145FCB4CCF5B0A64C1AC4-KHURLD]  
**Sent:** 11/13/2019 5:26:28 PM  
**To:** Kelly, Stephanie [kelly.stephanie@epa.gov]  
**Subject:** FW: Cooling Water Intake Rule - ESA  
**Attachments:** EPA-HQ-OW-2008-0667-4094 (316b esa memo to record).pdf; 316(b) FR notice 8-15-14.pdf; fr66-11202 (Coordination MOA).pdf; Final-316b-Biological-Opinion-and-Appendices-May-19-2014.pdf; cooling-water\_esa-instructional-memo\_12-11-2014.pdf

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**From:** Goodin, John <Goodin.John@epa.gov>  
**Sent:** Tuesday, October 08, 2019 6:48 PM  
**To:** Hurl, Kathy <Hurl.Kathy@epa.gov>  
**Cc:** McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>  
**Subject:** FW: Cooling Water Intake Rule - ESA

DELIBERATIVE

Kathy – thanks again for the materials. I do need to check with Andrew as you suggest on the additional notes on 316, so for now just transmitted the documents to Dave per his request. Part 2 in a moment...

Thanks,  
John

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**From:** Goodin, John  
**Sent:** Tuesday, October 08, 2019 6:12 PM  
**To:** Ross, David P <ross.davidp@epa.gov>  
**Cc:** Steven Neugeboren <Neugeboren.Steven@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Nagle, Deborah <Nagle.Deborah@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>  
**Subject:** FW: Cooling Water Intake Rule - ESA

DELIBERATIVE

Dave—this email is part 1 of 2 in follow-up to your request yesterday—thanks to Steve and his OGC team for the quick compilation. Part 2 will have the documents and OGC background related to the ECOS request and Silva response. Copying Andrew and Deborah for awareness if there are specific 316b threads you'd like to run down with them.

Thanks,  
John

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Alexis's note below highlights the most relevant portions of each document from the rulemaking and ESA consultation. OGC recommends starting with the first document (EPA memo to record) to get a good understanding of the process. The source materials are attached as well.

## Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

**From:** Wade, Alexis <Wade.Alexis@epa.gov>  
**Sent:** Monday, October 7, 2019 2:32 PM  
**To:** Kupchan, Simma <Kupchan.Simma@epa.gov>  
**Cc:** Witt, Richard <Witt.Richard@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Subject:** RE: Cooling Water Intake Rule - ESA

Here are the key 316(b) documents and I've highlighted the pages I think are most important for Dave.

1. 316(b) ESA memo to the record – **Ex. 5 Attorney Client (AC)**  
**Ex. 5 Attorney Client (AC)**
2. Preamble and rule – The preamble reaffirms the commitments in the 2001 MOA and includes the ESA procedures that are relevant. See pg. 48380 Section K for that discussion, in particular page 48381 column 3 to 48382.
3. 2001 Coordination MOA with the Services. See pgs. 11215-11216 for the procedures for issuance of state permits.
4. Joint Biological Opinion – Pages 68-74 describes the procedures in the rule and the Services' conclusions re: effects. The incidental take statement is on page 75-76.

5. Instructional memo to the water division directors. The memo describes the rule requirements for permitting director's relevant to listed species. We sent this memo to comply with Term and Condition #4 on page 77 of the BO.

Alexis Wade  
Attorney-Adviser  
Water Law Office  
EPA Office of General Counsel  
(202) 564-3273

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**From:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Sent:** Monday, October 7, 2019 8:41 AM  
**To:** Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>  
**Cc:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Subject:** Fwd: Cooling Water Intake Rule - ESA

John,

Could you also send me a copy of the Pete Silva memo and the ECOS letter that triggered it? And are you aware of any OGC analysis that was done in support of the Silva memo? Thanks.

Dave

Sent from my iPad

Begin forwarded message:

**From:** "Ross, David P" <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Date:** October 7, 2019 at 8:39:09 AM EDT  
**To:** "Fotouhi, David" <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>, "Sawyers, Andrew" <[Sawyers.Andrew@epa.gov](mailto:Sawyers.Andrew@epa.gov)>, "Goodin, John" <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>, "Neugeboren, Steven" <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>  
**Cc:** "Leopold, Matt (OGC)" <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>, "Forsgren, Lee" <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>, "Aguirre, Janita" <[Aguirre.Janita@epa.gov](mailto:Aguirre.Janita@epa.gov)>, "Wildeman, Anna" <[wildeman.anna@epa.gov](mailto:wildeman.anna@epa.gov)>  
**Subject:** Re: Cooling Water Intake Rule - ESA

Adding Steve.

Sent from my iPad

On Oct 7, 2019, at 8:38 AM, Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)> wrote:

Confidential; Deliberative

I'm currently evaluating a 404(g) state assumption proposal from Florida and Arizona and how to address ESA issues in state-assumed permitting. The proposal mentions the ESA process for the cooling water intake rule as a potential model. Could someone pull together the ESA-based components of that rulemaking for me, such as targeted discussion in the preamble, RTC, Bi-Op, etc. I'm not sure if this is an OGC or OWM assignment, so please work together to figure out the most efficient way to get a packet together.

Thanks!

Dave

Sent from my iPad